

FIREARMS (EXCERPT)
Act 372 of 1927

***** 28.422.amended THIS AMENDED SECTION IS EFFECTIVE FEBRUARY 22, 2016 *****

28.422.amended License to purchase, carry, possess, or transport pistol; issuance; qualifications; applications; sale of pistol; exemptions; transfer of ownership to heir or devisee; nonresident; active duty status; forging application as felony; implementation during business hours.

Sec. 2. (1) Except as otherwise provided in this act, a person shall not purchase, carry, possess, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section.

(2) A person who brings a pistol into this state who is on leave from active duty with the armed forces of the United States or who has been discharged from active duty with the armed forces of the United States shall obtain a license for the pistol within 30 days after his or her arrival in this state.

(3) The commissioner or chief of police of a city, township, or village police department that issues licenses to purchase, carry, possess, or transport pistols, or his or her duly authorized deputy, or the sheriff or his or her duly authorized deputy, in the parts of a county not included within a city, township, or village having an organized police department, in discharging the duty to issue licenses shall with due speed and diligence issue licenses to purchase, carry, possess, or transport pistols to qualified applicants unless he or she has probable cause to believe that the applicant would be a threat to himself or herself or to other individuals, or would commit an offense with the pistol that would violate a law of this or another state or of the United States. An applicant is qualified if all of the following circumstances exist:

(a) The person is not subject to an order or disposition for which he or she has received notice and an opportunity for a hearing, and which was entered into the law enforcement information network under any of the following:

(i) Section 464a of the mental health code, 1974 PA 258, MCL 330.1464a.

(ii) Section 5107 of the estates and protected individuals code, 1998 PA 386, MCL 700.5107, or section 444a of former 1978 PA 642.

(iii) Section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(iv) Section 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950a.

(v) Section 14 of 1846 RS 84, MCL 552.14.

(vi) Section 6b of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b, if the order has a condition imposed under section 6b(3) of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b.

(vii) Section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(b) The person is 18 years of age or older or, if the seller is licensed under 18 USC 923, is 21 years of age or older.

(c) The person is a citizen of the United States or an alien lawfully admitted into the United States and is a legal resident of this state. For the purposes of this section, a person is considered a legal resident of this state if any of the following apply:

(i) The person has a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

(ii) The person is lawfully registered to vote in this state.

(iii) The person is on active duty status with the United States armed forces and is stationed outside of this state, but the person's home of record is in this state.

(iv) The person is on active duty status with the United States armed forces and is permanently stationed in this state, but the person's home of record is in another state.

(d) A felony charge or a criminal charge listed in section 5b against the person is not pending at the time of application.

(e) The person is not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f of the Michigan penal code, 1931 PA 328, MCL 750.224f.

(f) The person has not been adjudged insane in this state or elsewhere unless he or she has been adjudged restored to sanity by court order.

(g) The person is not under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.

(h) The person has not been adjudged legally incapacitated in this state or elsewhere. This subdivision does

not apply to a person who has had his or her legal capacity restored by order of the court.

(4) Applications for licenses under this section shall be signed by the applicant under oath upon forms provided by the director of the department of state police. Licenses to purchase, carry, possess, or transport pistols shall be executed in triplicate upon forms provided by the director of the department of state police and shall be signed by the licensing authority. Three copies of the license shall be delivered to the applicant by the licensing authority. A license is void unless used within 30 days after the date it is issued.

(5) If an individual purchases or otherwise acquires a pistol, the seller shall fill out the license forms describing the pistol, together with the date of sale or acquisition, and sign his or her name in ink indicating that the pistol was sold to or otherwise acquired by the purchaser. The purchaser shall also sign his or her name in ink indicating the purchase or other acquisition of the pistol from the seller. The seller may retain a copy of the license as a record of the transaction. The purchaser shall receive 2 copies of the license. The purchaser shall return 1 copy of the license to the licensing authority within 10 days after the date the pistol is purchased or acquired. The return of the copy to the licensing authority may be made in person or may be made by first-class mail or certified mail sent within the 10-day period to the proper address of the licensing authority. A purchaser who fails to comply with the requirements of this subsection is responsible for a state civil infraction and may be fined not more than \$250.00. If a purchaser is found responsible for a state civil infraction under this subsection, the court shall notify the department of state police of that determination.

(6) Within 10 days after receiving the license copy returned under subsection (5), the licensing authority shall electronically enter the information into the pistol entry database as required by the department of state police if it has the ability to electronically enter that information. If the licensing authority does not have that ability, the licensing authority shall provide that information to the department of state police in a manner otherwise required by the department of state police. Any licensing authority that provided pistol descriptions to the department of state police under former section 9 of this act shall continue to provide pistol descriptions to the department of state police under this subsection. Within 48 hours after entering or otherwise providing the information on the license copy returned under subsection (5) to the department of state police, the licensing authority shall forward the copy of the license to the department of state police. The purchaser has the right to obtain a copy of the information placed in the pistol entry database under this subsection to verify the accuracy of that information. The licensing authority may charge a fee not to exceed \$1.00 for the cost of providing the copy. The licensee may carry, use, possess, and transport the pistol for 30 days beginning on the date of purchase or acquisition only while he or she is in possession of his or her copy of the license. However, the person is not required to have the license in his or her possession while carrying, using, possessing, or transporting the pistol after this period.

(7) This section does not apply to the purchase of pistols from wholesalers by dealers regularly engaged in the business of selling pistols at retail, or to the sale, barter, or exchange of pistols kept as relics or curios not made for modern ammunition or permanently deactivated.

(8) This section does not prevent the transfer of ownership of pistols to an heir or devisee, whether by testamentary bequest or by the laws of intestacy regardless of whether the pistol is registered with this state. An individual who has inherited a pistol shall obtain a license as required in this section within 30 days of taking physical possession of the pistol. The license may be signed by a next of kin of the decedent or the person authorized to dispose of property under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, including when the next of kin is the individual inheriting the pistol. If the heir or devisee is not qualified for a license under this section, the heir or devisee may direct the next of kin or person authorized to dispose of property under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, to dispose of the pistol in any manner that is lawful and the heir or devisee considers appropriate. The person authorized to dispose of property under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, is not required to obtain a license under this section if he or she takes temporary lawful possession of the pistol in the process of disposing of the pistol pursuant to the decedent's testamentary bequest or the laws of intestacy. A law enforcement agency may not seize or confiscate a pistol being transferred by testamentary bequest or the laws of intestacy unless the heir or devisee does not qualify for obtaining a license under this section and the next of kin or person authorized to dispose of property under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, is unable to retain his or her temporary possession of the pistol or find alternative lawful storage. If a law enforcement agency seizes or confiscates a pistol under this subsection, the heir or devisee who is not qualified to obtain a license under this section retains ownership interest in the pistol and, within 30 days of being notified of the seizure or confiscation, may file with a court of competent jurisdiction to direct the law enforcement agency to lawfully transfer or otherwise dispose of the pistol. A pistol seized under this subsection shall not be destroyed, sold, or used while in possession of the seizing entity or its agents until 30 days have passed since the heir or devisee has been notified of the seizure and no legal action regarding the

lawful possession or ownership of the seized pistol has been filed in any court and is pending. As used in this subsection:

(a) "Devisee" means that term as defined in section 1103 of the estates and protected individuals code, 1998 PA 386, MCL 700.1103.

(b) "Heir" means that term as defined in section 1104 of the estates and protected individuals code, 1998 PA 386, MCL 700.1104.

(9) An individual who is not a resident of this state is not required to obtain a license under this section if all of the following conditions apply:

(a) The individual is licensed in his or her state of residence to purchase, carry, or transport a pistol.

(b) The individual is in possession of the license described in subdivision (a).

(c) The individual is the owner of the pistol he or she possesses, carries, or transports.

(d) The individual possesses the pistol for a lawful purpose.

(e) The individual is in this state for a period of 180 days or less and does not intend to establish residency in this state.

(10) An individual who is a nonresident of this state shall present the license described in subsection (9)(a) upon the demand of a police officer. An individual who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

(11) The licensing authority may require a person claiming active duty status with the United States armed forces to provide proof of 1 or both of the following:

(a) The person's home of record.

(b) Permanent active duty assignment in this state.

(12) This section does not apply to a person who is younger than the age required under subsection (3)(b) and who possesses a pistol if all of the following conditions apply:

(a) The person is not otherwise prohibited from possessing that pistol.

(b) The person is at a recognized target range.

(c) The person possesses the pistol for the purpose of target practice or instruction in the safe use of a pistol.

(d) The person is in the physical presence and under the direct supervision of any of the following:

(i) The person's parent.

(ii) The person's guardian.

(iii) An individual who is 21 years of age or older, who is authorized by the person's parent or guardian, and who has successfully completed a pistol safety training course or class that meets the requirements of section 5j(1)(a), (b), or (d), and received a certificate of completion.

(e) The owner of the pistol is physically present.

(13) This section does not apply to a person who possesses a pistol if all of the following conditions apply:

(a) The person is not otherwise prohibited from possessing a pistol.

(b) The person is at a recognized target range or shooting facility.

(c) The person possesses the pistol for the purpose of target practice or instruction in the safe use of a pistol.

(d) The owner of the pistol is physically present and supervising the use of the pistol.

(14) A person who forges any matter on an application for a license under this section is guilty of a felony, punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(15) A licensing authority shall implement this section during all of the licensing authority's normal business hours and shall set hours for implementation that allow an applicant to use the license within the time period set forth in subsection (4).

History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16750;—Am. 1931, Act 333, Imd. Eff. June 16, 1931;—Am. 1941, Act 112, Imd. Eff. May 21, 1941;—Am. 1943, Act 51, Imd. Eff. Mar. 30, 1943;—CL 1948, 28.422;—Am. 1949, Act 170, Eff. Sept. 23, 1949;—Am. 1957, Act 259, Eff. Sept. 27, 1957;—Am. 1964, Act 216, Eff. Aug. 28, 1964;—Am. 1967, Act 158, Eff. Nov. 2, 1967;—Am. 1968, Act 301, Eff. Nov. 15, 1968;—Am. 1972, Act 15, Imd. Eff. Feb. 19, 1972;—Am. 1986, Act 161, Eff. Aug. 1, 1986;—Am. 1990, Act 320, Eff. Mar. 28, 1991;—Am. 1992, Act 219, Imd. Eff. Oct. 13, 1992;—Am. 1992, Act 220, Imd. Eff. Oct. 13, 1992;—Am. 1994, Act 338, Eff. Apr. 1, 1996;—Am. 2004, Act 101, Imd. Eff. May 13, 2004;—Am. 2008, Act 195, Eff. Jan. 7, 2009;—Am. 2008, Act 406, Imd. Eff. Jan. 6, 2009;—Am. 2010, Act 20, Imd. Eff. Mar. 25, 2010;—Am. 2012, Act 377, Imd. Eff. Dec. 18, 2012;—Am. 2014, Act 201, Imd. Eff. June 24, 2014;—Am. 2015, Act 37, Imd. Eff. May 21, 2015;—Am. 2015, Act 200, Eff. Feb. 22, 2016.

Constitutionality: The Michigan Court of Appeals held in *Chan v City of Troy*, 220 Mich App 376; 559 NW2d 374 (1997), that the citizen requirement, now MCL 28.422(3)(c), for a permit to purchase a pistol contained in MCL 28.422(3)(b) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and is unconstitutional.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue